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10/821,449	04/08/2004	Daniel Lazaretnik	P/4514-7 CIP	1335
2352 7590 07/27/2007 OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			EXAMINER MISKA, VIT W	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/821,449
Filing Date: April 08, 2004
Appellant(s): LAZARETNIK, DANIEL

Max Moskowitz
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/19/2006 appealing from the Office action mailed 6/19/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The amendment after final rejection filed on 12/19/2006 has been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2003/0151980	FARASH	8-2003
5,339,293	KAMIYAMA et al	8-1994

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 30 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Farash in view of Kamiyama et al.

The reference discloses a timepiece including dial face defined by the dial faces 2,4 with circumferential boundary as shown in Fig. 4 and geometric center , hours indicia as shown, first time movement 2 including hours and minutes hands (Par. 19), second time movement 4 including hours /minutes hands (Par. 19), the two movements spaced in relation to the each other and from the geometric center, the two movements being settable and running independently of one another (see Par. 26), and a watch band (Par. 0022, line 12) aligned with on of the axes of the watch (see Fig. 4) .

With respect to the oval shape of the dial, Farash suggests several shapes of the timepiece dial face in Figs. 1-4. The embodiment of Fig. 4 is described as "with a rectangular watch face in which the longer pair of opposing sides appears to have been bent outward.This extra space allows the two clocks to be positioned adjacent to one another, separated by a vertical line that is part of the watch face rim, and which runs between them." (Par. 24). Thus, to accommodate the two display faces, the face of the timepiece is stretched on both sides, as in applicants invention. Although this does not define a precise geometric "oval" shape according to a mathematical equation, this embodiment and that of Fig. 1 are of a generally oval shape.

One of ordinary skill in the art would be sufficiently taught by the reference to design the dial face in any of several ornamentally desirable shapes to suit individual preferences (see Par. 0022, lines 1-2) , with the design criterion that "This extra space allows the two clocks to be positioned adjacent to one another" (Par. 0024, lines 6-7) A geometrically "oval" shape, with a short and long axis would constitute one of such obvious variations of the disclosed dial shapes of Farash without altering the functionality of the device. Further, as evident from the embodiments of Figs. 1 and 4, the watch band may be placed in one of two orientations with respect to the dial face, and thus be "aligned" in some manner with either of the two axes of the face. Further, if the timepiece is constructed with a precise geometric oval shape elongated horizontally, the band in Fig. 4 will be "aligned" with the short axis of the face.

See also *Gardner v. TEC Systems, Inc.* (220 USPQ 777, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and the device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

The Farash reference further teaches the use of separate time setting buttons for each of two timepiece movements thereof (see par. 26, line 3, with one stem arrangement for each movement, as shown in Fig. 4. It is conventional in the timepiece art to employ a single actuator for the functions of a watch, as done in Farash or use plural switches/buttons for this purpose. Kamiyama et al teaches the use of buttons/crown 8,9,10,11 for setting and displaying interrelated timepiece functions 1-7 on a watch. One of ordinary skill in the art having both references would therefore be cognizant of the choice of either a single stem or a plurality of stems and corresponding elements for accessing the timepiece functions. Since Farash discloses two separate watch movements/clocks, it would be obvious that the single stem for controlling each movement may be replaced with a plurality of stems as a means for facilitating separate selection of each timepiece/movement function.

(10) Response to Argument

Appellant argues that the prior art of record lacks four of the claimed features: 1) an oval shaped dial boundary, 2) a long and short axis defined by the oval shaped boundary, 3) two stem arrangements comprised of a plurality of stems respectively placed on each side of the movements, and 4) a watch band aligned with the short axis.

Regarding the shape of the dial face boundary, the four embodiments of Farash suggest a design choice of the shape of the watch face, with Figs. 1 and 4 suggesting a generally oval shape. Although a geometric oval shape is not specifically set forth, the disclosed embodiments provide a sufficient range from circular to rectangular to suggest to one of ordinary skill in the art that an oval shape would be within the purview of the disclosure, particularly in view of the disclosure of a generally oval shape in Figs. 1 and 4. As noted in the preceding paragraphs, a variation in shape or dimensions that does not alter the function of the device or offer unexpected results is not a patentably distinct feature.

With respect to the long and short axis, if the Farash timepiece is made of an oval shape as suggested above, a short and long axis of an oval will be defined thereby, as noted. The watch band in the embodiment shown in Fig. 4 would then be aligned with the short axis if the oval face is oriented to be elongated horizontally.

Regarding the plural stem arrangement located on each side of the movements, Farash teaches only one stem located on the left side of the first movement and one stem on the right side of the second movement for separately controlling each movement, as shown in Fig. 4 and described in par. 26, line 3. However, as set forth above, the use of plural stems in place of a single stem for controlling functions of a timepiece is well known, as evidenced by Farash and Kamiyama et al. It would be obvious for one of ordinary skill in the art to replace each of the single stems of each movement with plural stems, as noted previously, in order to facilitate the manipulation of the functions of the watch.

Appellant's argument at the top of page 4 with respect to Kamiyama et al is not completely accurate. The timepiece of Kamiyama et al does not have separate movements in the same manner as appellant's device, i.e. with each movement being independently and separately operated. Rather, Kamiyama et al disclose a single movement with several displays or functions, where the various display gear trains are interconnected, see col. 9, lines 41-45. Plural stems 8-11 control the various functions of the timepiece. Each stem is not dedicated to a single movement (function), as alleged by appellant. For examples, stem 8 controls both the hour/minute hands 1,2 (col. 6, line 17) as well as the calendar hand 7a (col. 10, line 56). Kamiyama et al is only used for a teaching of a timepiece with plural stems for controlling the functions thereof. Since

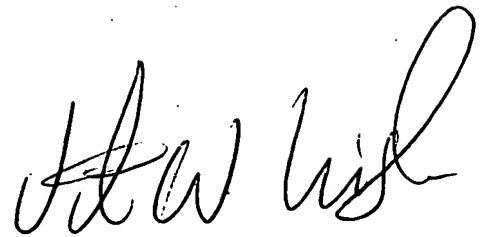
each movement 2,4 of Farash is independent, each stem of each movement may be replaced with plural stems, as shown by Kamiyama et al.

Appellant's reference at page 4, second paragraph, to the Final Rejection and the statement with respect to Kamiyama et al is noted. However, Kamiyama et al is not construed to disclose plural movements, but rather a single movement with plural displays and functions, as noted above. The reference to "plural movements" in the Final Rejection (page 3, par 4, lines 4-5) was intended to denote "plural displays".

Appellant has indicated absence of specific features in each of the references separately. However, obviousness is not defined by the presence or absence of all claimed elements in a single reference, but by a determination of what the prior art of record together "would reasonably suggest to one of ordinary skill in the art." (*In re DeLisle* 160 USPQ 806). See also *KSR International Co. v Teleflex Inc*, 550 US___2007: "The obviousness analysis cannot be confined by formalistic conception of the words, teaching, suggestion or motivation, or by an overemphasis of on the importance of published articles and the explicit content of issued patents. "


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Vit W. Miska
Primary Examiner
Art Unit 2833

Conferees:

Paula Bradley (SPE AU 2833) 
David Bloom 